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MEMORANDUM OF CONVERSATION

Subject: ~~Informal Discussions~~ on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau
Mr. Mikizo NAGAI, Cheif, Sixth Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Firday, March 28, 1952. ELEVENTH INFORMAL MEETING

ARTICLE XIV

Mr. Otabe stated that the Ministry of International Trade and Industry is charged with the responsibility of establishing minimum qualitative standards for export goods. These qualitative standards vary for different countries of destination at the present time. Mr. Otabe added that it was not impossible that the required standards for export goods might be lowered with respect to certain importing countries which would accept lower-quality Japanese exports. He inquired whether the establishment of such varying standards of quality

for export goods, as applied by that Ministry or some other Government agency, would be considered to be in violation of the principle of non-discrimination with respect to import and export restrictions.

Mr. Adams replied that the establishment of minimum qualitative standards was regarded as a matter of internal administration within the Japanese Government. Such standards have already been established for the purpose of enhancing the prestige of Japanese goods abroad, thus encouraging Japan's export trade. A system of varying standards of quality for different destinations would have little effect on the trade between Japan and other countries, since this would depend entirely on the demand for Japanese export goods, with quality and price (in competition with the products of other manufacturing countries) being important factors. It would appear therefore that there would be no discrimination against American buyers in the establishment of such varying qualitative standards for export goods.

Mr. Nagai then stated that the last sentence, beginning with "A like rule....", in paragraph 1 was not clear to the Japanese side. He added that if this clause referred to the international transfer of payments it should properly be placed in Article XII.

Mr. Singer replied that this clause is found in substance in several other FCN Treaties concluded by the United States, particularly in older versions of the article on exchange controls. This sentence has now been added to Article XIV in order to maintain the symmetry of the Treaty's provisions with respect to customs treatment, and to bring this Article in closer conformity with the comparable provisions of the GATT and the ITO Charter. He pointed out that exchange controls of the present day frequently overshadow the tariff in restricting or diverting international trade, and that it is important that the principle of non-discrimination in customs matters be clearly applicable both to exchange controls and the tariff.

Mr. Yukawa stated that the first part of paragraph 1 referred to customs duties and other charges imposed on goods imported or exported, and that it was difficult to see the exact connection between such duties and charges on the one hand, and the international transfer of payments for such goods on the other. Mr. Otabe added that it was his understanding that paragraph 1, Article XII, covered the international transfer of payments, including the requirements established for such transfers, and that the extension of national and most-favored-nation treatment in Article XII appeared fully to cover this problem. The need for the second sentence of paragraph 1, Article XIV, was therefore not clear, stated Mr. Otabe, and an explanation of the relationship between this sentence and Article XII would be helpful.

Mr. Adams replied that Article XII referred to international payments as such, with respect to which national and most-favored-nation treatment was accorded. Thus, he said, Article XII clearly established non-discriminatory treatment for a Japanese who would wish to effect a payment or remit or transfer other funds, including financial instruments, from the United States to Japan, or the United States to any third country. Under Article XIV, the United States, having already accorded most-favored-nation treatment to the products of Japan (with respect to their entry into the United States and in all matters relating to duties and other charges, and other regulations and formalities covering imports), would also extent such treatment to the actual payment for such imported goods. It could be seen, therefore, that the individual making the payment under Article XIV need not be a Japanese national, but would in most cases be an American importer. In Japan, the applicant for foreign exchange coverage would not in normal circumstances be an American national (who would also be covered by Article XII), but a Japanese importer. What was being assured the Japanese national by the United States (and American nationals by Japan) under Article XIV was simply that the actual payment for his goods, either before or after their entry into the United States, or upon the filling of the original order and the movement of the goods to the United States, would not be delayed by means of discriminatory formalities. It also gave assurance that discriminatory charges would not be assessed on the actual payment by the importer nor on the financial instruments involved, thus facilitating trade between the two countries.

Mr. Singer added that most, if not all, imports into Japan at the present time were covered by letters of credit issued by a licensed foreign exchange bank simultaneously with the allocation of exchange by the Foreign Exchange Control Board, but that there were undoubtedly cases - and these might increase in the future - where payment was made after the allocation of exchange or the issurance of the import license. In the former case, payment and allocation went hand in hand and would come generally within the provisions of Article XII. In the latter case, however, actual payment was divorced from exchange or import licensing, and would therefore be covered by the second sentence of paragraph 1, Article XIV.

Mr. Iukawa stated that he assumed that this sentence referred only to "charges", since "regulations, requirements and formalities" in connection with payments and the allocation of foreign exchange are covered by Article XII. He suggested therefore that the second sentence, paragraph 1, Article XIV, be amended to read: "A like rule shall apply with respect to charges of any kind imposed on the international transfer of payments for imports and exports". He said that this amendment would be in line with the provisions of Article VIII of the GATT.

Mr. Bassin replied that he did not believe this sentence to be so limited, and that regulations, requirements and formalities applied to the actual payment for goods as well as to the goods themselves. For example, and as previously mentioned, cases might arise where the original exchange licensing were conducted in an entirely non-discriminatory fashion, yet when payment was to be made (and when this was entirely divorced from the original exchange allocation procedures) certain formalities might be imposed on the actual transfer of payments for imported goods. It was the intent of Article XIV to ensure that such formalities or requirements, if any, were not discriminatory.

Mr. Yukawa then raised the question of the public notice requirement in paragraph 3(a), stating that it did not appear appropriate that a bilateral treaty should make such a stipulation. Mr. Yukawa pointed out that the Ministry of International Trade and Industry had already given consideration on several occasions to the abolition of its present public notice system. That Ministry had reason to believe that the somewhat detailed information it now released concerning the amount of foreign exchange to be allocated for a given commodity and the country from which import was to be made was detrimental to Japan's best interests. Supplying countries could readily see exactly how much Japan expected to buy and on what source it relied. It was believed that exporting countries, armed with such information, could then gauge the price Japan could afford to pay for a certain commodity. The present public notice system was believed to have led to unwarranted price increases for some essential foodstuffs and raw materials from certain supplying countries.

Mr. Bassin replied that this clause is contained, in effect, in a number of the earlier treaties concluded by the United States, and that it has long been standard in bilateral trade agreements entered into by the United States. Its omission from treaties negotiated from 1949 to 1951 was due to the expectation that the ITO Charter might become universally applicable. This provision is, of course, in the GATT, and it is considered to be a normal, internationally-accepted rule. He added that he could not understand how Japanese importers and exporters or foreign buyers and suppliers could have any idea of the trade they might develop, or the future commitments they might make unless such prior public notice were made.

Mr. Adams added that the Ministry of International Trade and Industry apparently believed that some of its public notices divulged too much information, particularly as to the country of source. The Ministry appeared to be concerned primarily with the price effect of such notices on basic foodstuffs - rice, wheat and barley - and on essential raw materials - iron ore, coking coal, wool, and non-ferrous metals. Mr. Adams pointed out that even if abstract or generalized public notices were issued concerning these commodities - or even if no notices at all were made public, any foreign supplier could estimate Japan's requirements without too much difficulty (on the basis of previous experience, from reports on Japan's industrial production, and other available data).

Mr. Yukawa pointed to the phraseology of paragraph 3 (a), "it shall as a general rule give prior public notice...", and asked whether it could be understood that this did not obligate either party to give such notice in those instances where it would be likely to affect adversely the market conditions of specific commodities to be imported. Mr. Otabe suggested that a reservation to this effect be included in the Protocol.

Mr. Singer replied that it was the purpose of paragraph 3 (a) to clarify that the principle of adequate public notice is to be maintained with respect to the amount of goods which may be imported or exported during prescribed periods whenever quantitative restrictions are enforced. The phraseology employed in this paragraph (e.g. "as a general rule") implied that in exceptional cases - for example, where advance public notice might seriously affect pricing and market conditions of a specific commodity - this notification might be made more general in nature in order not to divulge market information prematurely, or might even be withheld temporarily from the public. Such general notices would be possible in Japan, where import allocations are based on currency availability and not on a strict country-by-country quota basis.

Mr. Mori stated that the Economic Stabilization Board was, as a general practice, issuing public information, including total exchange availability, with respect to imports for the convenience of traders, but that there was no legal requirement for such releases. He added that although the Ministry of International Trade and Industry was presently required to issue notices concerning imports (without the total exchange availability given for each of the commodities concerned), based on the quarterly foreign exchange budget system, it was possible under the present law that public notification be withheld where such notice might adversely affect the market conditions of the specific commodities to be imported. Consequently it was feared that the Japanese Government would not be able to meet satisfactorily the treaty obligations with respect to this matter.

Mr. Otabe added that the requirement of prior public notice in all cases might sometimes seriously embarrass Japan, or weaken its bargaining position with respect to other countries. He stated that Japan might be negotiating with Australia, for example, on a trade plan covering the future exchange of goods, and that the amount of wool desired by Japan was a point at issue. If at the same time Japan were obligated to make public the amount of its exchange allocation for wool during the ensuing six months, it would materially weaken its bargaining power against Australia (since the latter supplies most, if not all, of Japan's wool requirements).

Mr. Yukawa added that there was no particular objection to this clause with respect to imports from the United States, as Japan's trade pattern with the latter does not involve these sensitive commodities, but that its inclusion might seriously affect imports of certain commodities from countries other than the United States. He suggested therefore that a reservation be entered in the Protocol to the Treaty along the lines previously mentioned, to the effect that "It is understood that the provisions of paragraph 3 (a), Article XIV, shall not obligate either Party to give prior public notice when such notice is likely to affect adversely the market conditions of specific commodities to be imported".

Mr. Adams replied that such a reservation in the Protocol was far too broad in nature and would nullify paragraph 3 (a), Article XIV. He suggested that the statement made by Mr. Singer (i.e. with reference to the phrase "as a general rule") would appear to give the Ministry of International Trade and Industry the lattitude it desired with respect to certain sensitive commodities, while still making effective the general requirement of prior public notice. He pointed out that international traders could not be expected to operate in the dark, but that the issuance of less detailed information in that Ministry's public releases would probably meet the needs of businessmen. Such general releases might reveal only the total amount of a foreign exchange allocation for a sensitive commodity and not the specific sums set aside for procurement from each individual supplying country. He added that Japan already issues general notices of this type on total exchange availability.

In reply to Mr. Adams' statement Mr. Mori stated that although the "total exchange availability" was being published in some releases of the Ministry of International Trade and Industry, that Ministry's official "public notifications" listed only the maximum limit of exchange availability permitted to each individual importer, and he called the attention of the American side to his previous statement on this point.

Mr. Singer added that further discussions with the Ministry of International Trade and Industry along these lines, during which the phraseology employed in paragraph 3 (a) could be clarified for that Ministry, might be useful. He added that the question raised by that Ministry was clearly understood by the American side, and that it was believed that this clause offered the desired latitude without the need for any further reservation which would weaken the general principle of this paragraph.

Mr. Yukawa stated that the Japanese representatives would consult with the Ministry of International Trade and Industry on this point, and requested that, in the meantime, the American side give due consideration to the reservation posed by the Japanese side.

It was agreed that the discussions on Article XIV would be continued at the next meeting to be held on Tuesday, April 1, 1952.

/s/ M. Yukawa

Morio Yukawa
Director
Economic Affairs Bureau
Ministry of Foreign Affairs

/s/ Frank A. Waring

Frank A. Waring
Counselor for Economic Affairs
Office of the United States
Political Adviser, Japan